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Counsel for the Official Committee of Unsecured  
Creditors of BH S&B Holdings LLC, *et al.*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

BH S&B HOLDINGS LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 08-14604 (MG)

(Jointly Administered)

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OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS, on behalf of DEBTORS,

Plaintiffs,

v.

45220 Inc.,

Defendant.

Adv. Pro. No. 09-\_\_\_\_\_ (MG)

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**COMPLAINT**

The Official Committee of Unsecured Creditors (the “Committee”) of BH S&B Holdings LLC, *et al.* (the “Debtors”), by their attorneys, Arent Fox LLP, complaining of defendant 45220 Inc., (the “Defendant”), alleges as follows:

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<sup>1</sup> The Debtors are: BH S&B Holdings LLC; BHY S&B Intermediate Holdco LLC; BH S&B Retail LLC; BH S&B Lico LLC; Heritage Licensing LLC; Fashion Plate Licensing LLC; Cubicle Licensing LLC; and BH S&B Distribution LLC.

### **NATURE OF THIS ACTION**

1. This adversary proceeding is commenced pursuant to 11 U.S.C. §§ 547, 548, 549 and 550 to set aside and recover certain preferential and/or fraudulent and/or post-petition transfers by the Debtors to the Defendant.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

3. This adversary proceeding has been referred to the Court pursuant to 28 U.S.C. § 157(a) and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.) dated July 10, 1984.

4. This adversary proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (F) and (H).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409, as this proceeding arises in and relates to a case under the Bankruptcy Code pending in this District.

### **THE BANKRUPTCY CASE**

6. On November 19, 2008 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases, and the Debtors continue to operate as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

### **THE ADVERSARY PROCEEDING PARTIES**

7. On November 26, 2008, the United States Trustee appointed the Committee. On December 19, 2008, Arent Fox LLP was appointed as counsel to the Committee. Pursuant to a Stipulation and Order dated January 21, 2009, the Debtors conferred upon the Committee the

right to “investigate, assert, commence, and prosecute to conclusion, on behalf of the Debtors, any and all claims or causes of action, whether arising under the Bankruptcy Code, federal, state or common law or otherwise.”

8. On information and belief, 45220, Inc. is a New York corporation whose address is c/o Schreck Rose Dapello & Adams, LLP, 1790 Broadway, 20th Floor, New York, New York 10019, Attn: Ira Schreck, Esq.

**FIRST CLAIM FOR RELIEF**  
**(Avoidance of Preferential Transfers)**

9. The Committee repeats and re-alleges the allegations contained above, as if fully set forth herein.

10. The Committee seeks to recover all transfers made to the Defendant, which are avoidable pursuant to 11 U.S.C. § 547(b).

11. Upon information and belief, within the ninety (90) days prior to the Petition Date, the Defendant received avoidable transfers from the Debtors totaling \$4,030,000.00, as set forth more fully in **Exhibit A** (the “Transfers”).

12. Upon information and belief, the Transfers were made to the Defendant on or within ninety (90) days prior to the Petition Date.

13. Upon information and belief, the Transfers were made to or for the benefit of the Defendant for or on account of antecedent debt owed by the Debtors before such transfers were made.

14. Upon information and belief, the Debtors were insolvent at the time the Transfers were made.

15. Upon information and belief, the Transfers enabled the Defendant to receive more than it would have received: (a) in a case under Chapter 7 of the Bankruptcy Code, (b) if the Transfers had not been made, and (c) if Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

16. By reason of the foregoing, the Transfers are avoidable and recoverable under Sections 547(b) and 550 of the Bankruptcy Code.

17. By reason of the foregoing, the Committee is entitled (i) to a judgment setting aside the Transfers, and (ii) to recover the sum total of the Transfers as set forth in **Exhibit A** plus interest, costs, and attorneys' fees.

**SECOND CLAIM FOR RELIEF**  
**(Avoidance of Fraudulent Transfers)**

18. The Committee repeats and re-alleges the allegations contained above, as if fully set forth herein.

19. The Committee seeks to recover all transfers made to the Defendant, which are avoidable pursuant to 11 U.S.C. § 548.

20. The Debtors received less than a reasonably equivalent value in exchange for the Transfer(s); and the Debtors

(a) were insolvent on the date that the Transfer(s) were made or became insolvent as a result of the Transfer(s); or

(b) were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital; or

(c) intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as such debts matured.

21. By reason of the foregoing, the Transfers are avoidable and recoverable under Sections 548(a)(1)(B) and 550 of the Bankruptcy Code.

22. By reason of the foregoing, the Committee is entitled (a) to a judgment setting aside the Transfers, and (b) to recover the sum total of the Transfers set forth in **Exhibit A** plus interest, costs, and attorneys' fees.

**THIRD CLAIM FOR RELIEF**  
**(Avoidance of Post-Petition Transfers)**

23. The Committee repeats and re-alleges the allegations contained above, as if fully set forth herein.

24. The Committee seeks to recover all unauthorized transfers made to the Defendant, which are avoidable pursuant to 11 U.S.C. § 549.

25. Upon information and belief, the Debtors made transfers to Defendant after the Petition Date.

26. Upon information and belief, said transfers were not authorized under the Bankruptcy Code or by the Court.

27. By reason of the foregoing, any and all post-petition transfers are avoidable and recoverable by the Committee under 11 U.S.C. §§ 549(a) and 550.

28. By reason of the foregoing, the Committee is entitled (a) to a judgment setting aside the Transfers, and (b) to recover the sum total of the Transfers set forth in **Exhibit A** plus interest, costs, and attorneys' fees.

**DISALLOWANCE OF CLAIMS**

29. The Defendant's claim is disallowed pursuant to Section 502(d) of the Bankruptcy Code.

## CONCLUSION

**WHEREFORE**, the Committee demands judgment against Defendant, as follows:

- (a) setting aside the Transfers pursuant to 547(b), 548, 549 and 550 of the Bankruptcy Code, and compelling Defendant to pay to the Committee the sum total of Transfers set forth in **Exhibit A** plus interest from the date of the transfers;
- (b) awarding the Committee attorneys' fees;
- (c) awarding the Committee the costs and disbursements of this adversary proceeding; and
- (d) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 8, 2009

ARENT FOX LLP  
Counsel for the Official Committee of Unsecured  
Creditors for BH S&B Holdings LLC, *et al.*

By: /s/ Robert M. Hirsh  
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## **Exhibit A**

<b>Payee</b>	<b>Payment Date</b>	<b>Amount (Dollars)</b>
45220 Inc.	10/3/08	4,000,000.00
45220 Inc.	10/21/08	30,000.00
<b>Total Transfers</b>		<b>4,030,000.00</b>